

Remarks

The Examiner has set forth a restriction requirement, which requirement is traversed as improper. The species to be selected from are: 1) types of mammalian cell lines well known in the art, *viz.*, VERO cells; CHO cells; diploid fibroblast cells; and MRC-5 diploid lung cells (which are fetal lung fibroblasts); and 2) cell products, or contents of cells that are of interest, namely, polysaccharide; protein; and virus.

A restriction requirement is only proper when two criteria are met:

- (1) The inventions must be independent or distinct as claimed; and
- (2) There must be a serious burden on the examiner if restriction is not required

Clearly, the inventions are not independent and Applicants suggest they are not distinct. The MPEP in 802.01 states that “[t]he term "distinct" means that two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER...” The cell lines listed above and the cell products do not fit a definition of the word “distinct”. Additionally, it is difficult to believe that an undue burden would be met if the Examiner had to search for methods of disrupting cells that included CHO; VERO and diploid fibroblasts, especially since CHO and VERO cells *are* fibroblasts. Therefore it is not clear what the Examiner means by the statement that the species are “not all art recognized equivalents.” (especially the mammalian fibroblast cell lines). It is also difficult to imagine a search that would encompass only the retrieval of a certain type of cell product, such as a virus, following a method of cell disruption.

Further, even if one were to accept the premise that the species are distinct (which Applicants do not) all of the species are clearly related under the particular disclosure. The MPEP at 806.04(b) states that “[s]pecies may be either independent or related under the particular disclosure. Where species under a claimed genus are not connected in any of design, operation, or effect under the disclosure, the species are independent

inventions." The disclosure indicates, for example at page 2, lines 25-27, that the species are related.

In order to fully respond to the Restriction Requirement, Applicants elect the following, with traverse: the species of diploid fibroblast cells and virus. No fee has been calculated to be due in regard to responding to the Restriction Requirement. However, if any fee is due for entry of these papers, please charge the fee(s) to Deposit Account No. 13-2755, as a large entity. Please credit any overpayment or charge any fee deficiency to Deposit Account No. 13-2755.

The Examiner is invited to contact the undersigned attorney if clarification is required on any aspect of this response, or if any of the claims are considered to require further amendment to be placed in condition for examination and allowance.

Respectfully submitted,

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